



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”) and recovery of the filing fee.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an Order of Possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with Section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant, and two agents for the Landlord, including A.M., who is a representative from the property Management Company and P.F., who is the building manager. For ease of reference in this decision, I will refer to A.M. as the “Agent” and P.F. as the “Building Manager”. All parties present provided affirmed testimony and were given the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of documentary evidence.

At the request of the Tenant, a copy of the decision will be mailed to them at the dispute address. At the request of the Agents, a copy of the decision and any Order of Possession issued will be e-mailed to them at the e-mail address provided in the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

Preliminary Matters

A copy of the One Month Notice was not before me for consideration in the hearing, however, both parties agreed that one had been served and received. As a result, I accepted affirmed testimony from both parties regarding the contents of the One Month Notice and requested that the parties each submit a copy of the One Month Notice to the Branch by 12:00 P.M. the following day. The parties complied with this request and the One Month Notices submitted by the parties matched the testimony provided in the hearing. As a result, I accepted the One Month Notice for consideration in my decision.

Issue(s) to be Decided

Is there a valid reason to cancel the One Month Notice under the *Act*?

If the Tenant is unsuccessful in seeking to cancel the One Month Notice, is the Landlord entitled to an Order of Possession pursuant to Section 55(1) of the *Act*?

Background and Evidence

The parties agreed that the one-year fixed-term tenancy, which began on April 1, 2011, is currently a month to month tenancy and that rent in the amount of \$839.00 is due on the first day of each month.

The Agents for the Landlord testified that the One Month Notice was served on the Tenant because the Tenant's multiple and unfounded complaints have significantly disturbed another occupant or the Landlord.

The One Month Notice in the documentary evidence before me, dated September 13, 2017, has an effective vacancy date of October 31, 2017, and gives the following reason for ending the tenancy:

- The Tenant or person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

The Agent provided a Proof of Service Notice to End Tenancy (the "Proof of Service") indicating that the One Month Notice was served on the Tenant by attaching a copy to the door of the Tenant's rental unit on September 18, 2017. The Tenant acknowledged receiving the One Month Notice in the manner described above.

Although both parties provided significant testimony in relation to the Tenants complaints, I have summarized the relevant evidence and testimony below.

The Tenant lives in a multi-unit apartment building and both parties agree that the Tenant has made at least five complaints over the past year regarding the heat in his apartment, a vehicle break-in on the premises, and various odors entering his apartment.

The Tenant testified that they are continually disturbed by strong scented odors from several of the units below him. The Tenant testified that they have seen their Dr. regarding the adverse effects of the odors entering their apartment and submitted a Dr.'s note confirming that they suffer from asthma and have reported an increased incidence of asthma attack as a result of the air quality in their apartment. In contrast the Building Manager testified that they have attended the building on several occasions to investigate the Tenant's complaints and have found no such odors in the Tenant's unit, the hallways, or the units the Tenant alleges the odors are originating from. The Agent and the Building Manager testified that Tenant's complaints regarding odor are unfounded and constitute an unreasonable disturbance to both the Landlord and other occupants of the building. In support of this testimony they submitted two letters from other occupants of the building stating that no such odors are present. One of the letters also stated that the occupant of that unit felt unreasonably disturbed by the Tenant's complaints.

Both parties agreed that the Tenant requested that the Building Manager review the security footage for the parkade as he alleged that his vehicle had been broken into. While the Building Manager testified that the Tenant's vehicle had not been broken into, the Tenant testified that it had, and that he had filed both a police report and an ICBC claim as a result.

While the parties could not agree as to the cause of the temperature issue reported by the Tenant, both parties acknowledged that the Tenant made a complaint about the temperature in his unit and that when the Building Manager attended, the radiator in the unit was working properly.

The Agent and the Building Manager both argued that the Tenant's constant, "silly" and unfounded complaints amount to harassment and a significant and unreasonable disturbance to the Landlord and other occupants of the building. The Tenant denied that their complaints were unreasonable, unfounded or that they had resulted in a significant or unreasonable disturbance to either the Landlord or other occupants of the building. In

contrast the Tenant testified that it is the other occupants of the building who are unreasonably disturbing him.

Analysis

I have reviewed all relevant documentary evidence and oral testimony and in accordance with section 88 of the *Act*, I find that the Tenant was personally served with the One Month Notice on September 18, 2017, the date that they acknowledge receiving it.

Section 47 of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. However, the ending of a tenancy is a serious matter and when a tenant disputes a Notice to End Tenancy, the landlord bears the burden to prove that they had sufficient cause under the *Act* to issue the notice. Having carefully reviewed the evidence before me from both parties, I find that for the following reasons the Landlord has failed to establish, on a balance of probabilities, that they have cause to end the tenancy under section 47 of the *Act*.

Although the Agents testified that the Tenant's constant, "silly" and unfounded complaints have significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property, I do not agree. Although the Agent may not have found any odors or problems with the heating in the Tenants unit upon attendance, this does not mean that at the time of the complaint, the Tenant was not experiencing these issues. Although the Agent testified that the Tenant's complaints are "silly", I find that the Tenants complaints directly relate to the safety and security and the quiet enjoyment of both the building and their rental unit. Further to this, although the Building Manager stated that no one else in the building complains, I do not find it unreasonable that the Building Manager would be required to deal with some complaints during the ordinary course of her employment.

Finally, although a complaint letter was submitted from one other occupant of the building regarding the complaints made by the Tenant, the evidence and testimony of the Agent and the Building Manager indicate that the Building Manager was only required to attend the units of other occupants of the building as a result of the Tenant's complaints on a couple of occasions in the last year. I therefore find this evidence insufficient to demonstrate that the Landlord or the other occupants of the building suffered anything more than temporary discomfort or inconvenience as a result of the Tenant's complaints and I do not find this sufficient to constitute significant interference or an unreasonable disturbance.

Based on the foregoing, I find that the Landlord has therefore failed to establish a cause under Section 47 of the *Act* to end the tenancy and I order that the One Month Notice dated September 13, 2017, is cancelled and of no force or effect.

Despite the foregoing, and in the view of helping the parties to avoid future disputes, I remind the parties that the Landlord is obligated under the *Act* to protect the entitlement to quiet enjoyment of all occupants of the building, not just that of the Tenant. This means that the Landlord *must* take reasonable steps to correct situations where the Landlord is aware of a significant interference or unreasonable disturbance and their failure to do so *may* form a basis for a claim of a breach of the entitlement to quiet enjoyment by the Tenant or other occupants of the building. However, the Tenant should also be aware that while I have not found that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord in relation to this matter, the Landlord *may* have cause to end this tenancy if the Tenant, by way of complaints or other means, significantly interferes with or unreasonably disturbs another occupant or the Landlord of the residential property in the future.

Conclusion

I order that the One Month Notice dated September 13, 2017, is cancelled and that the tenancy continue in full force and effect until it is ended in accordance with the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 7, 2017

Residential Tenancy Branch